

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH)
BENEFITS FUND, PIRELLI ARMSTRONG)
RETIREE MEDICAL BENEFITS TRUST;)
TEAMSTERS HEALTH & WELFARE FUND)
OF PHILADELPHIA AND VICINITY;)
PHILADELPHIA FEDERATION OF)
TEACHERS HEALTH AND WELFARE)
FUND; DISTRICT COUNCIL 37, AFSCME -)
HEALTH & SECURITY PLAN; JUNE)
SWAN; BERNARD GORTER, SHELLY)
CAMPBELL and CONSTANCE JORDAN)

Plaintiffs,)

v.)

FIRST DATABANK, INC., a Missouri)
corporation; and McKESSON)
CORPORATION, a Delaware corporation,)

Defendants.)

C.A. No. 1:05-CV-11148-PBS

**PLAINTIFFS' MOTION OR SUGGESTION FOR THE
SETTING OF A STATUS CONFERENCE**

Class Plaintiffs respectfully suggest that the Court may find it useful to schedule a status conference regarding the trial of Classes 1 and 2. The Court previously held a status hearing on September 20, 2007 to address such issues after it denied the parties' joint motion to modify its prior scheduling order because the proposed schedule would have prevented the Court from "try[ing] the consumer trial this clerkship year."¹ The Court expressed a preference for a trial by July 2008 but no trial date has been set. At the status hearing certain matters were raised which

¹ Order, dated September 9, 2007.

precluded the Court from issuing a final scheduling order for Classes 1 and 2. First, McKesson's appeal of the Court's class certification order was still pending before the First Circuit.

Additionally, the Court's certification order left unresolved whether Plaintiffs had proposed an adequate damages methodology to measure the damages of the TPP Class. Further, Plaintiffs advised the Court that they intended to seek leave to amend their complaint.

Much has happened since the last status hearing:

- The First Circuit denied McKesson's appeal.
- The Court held a hearing on Plaintiffs' damages methodology on November 13 but has not yet ruled whether it will certify the TPP Class for damages. The Court's decision on this matter has implications for class notification; additionally, it also triggers the deadline for McKesson's expert report on damages which has not been submitted.²
- The Court's January 2, 2008 scheduling order sets deadlines for the U&C Class but left open the trial date for Classes 1 and 2 as well as the deadline for Plaintiffs' rebuttal expert reports.³
- On January 22, the Court denied without prejudice Plaintiffs' proposed settlement with First DataBank and Medispan for reasons articulated at the final approval

² See transcript of November 13, 2007 hearing, at 52:13-20, granting McKesson 45 days to serve its expert report on damages from the entry of the Court's order on Plaintiffs' damages methodology.

³ The Court granted Plaintiffs' motion to set the trial schedule for the U&C class in part but denied Plaintiffs' request to bar use of evidence obtained through discovery in the U&C case. The Court also rejected McKesson's argument that allowing Classes 1 and 2 to go to trial before the U&C Class would be tantamount to a one-way intervention in violation of Fed. R. Civ. P. 23(c)(3). The Court ruled that it did not "agree with plaintiffs' position on the 'bar' or defendants' position on the so-called 'one way intervention.'"

hearing. Subsequently, parties to the proposed settlement filed a status report to advise the Court that counsel for the affected parties had reached an agreement in principle regarding appropriate modifications to the proposed settlement, subject to review by the parties.

In light of these developments Plaintiffs suggest that a status conference might be useful to address remaining scheduling issues.

Dated: March 5, 2008

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CERTIFICATE PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for Plaintiffs conferred with McKesson regarding the filing of this motion for a status hearing and counsel for McKesson advised that McKesson does not object to a status hearing.

/s/ Steve W. Berman

Steve W. Berman

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on March 5, 2008.

/s/ Steve W. Berman

Steve W. Berman